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BARRISTERS AND SOLICITORS

Business Bulletin, February 2006
Saying Goodbye to Mandatory Retirement
by Robert Reid¹

On December 12, 2006, virtually every policy or union contract requiring retirement at age 65 (or some other defined age) will be prohibited as age discrimination. The decision about when to retire will be the decision of the employee, not the employer.

Once mandatory retirement ends, we can only guess at how many people who would otherwise have retired will choose to work past age 65. Most folks still want to retire sooner than later if they can afford to do so. Nationally, the average retirement age is now 62. In the Province of Quebec, where mandatory retirement was abolished years ago, the actual average retirement age is 60. The challenge for employers is to consider how the change may affect their particular workplaces. Are there older workers who have been allowed to be less productive because of a retirement expectation?

With the coming changes, it is advisable to develop and implement age-neutral performance evaluation systems, so employees regardless of age will be assessed and managed effectively. Reasonable performance standards, attendance expectations and productivity requirements should be established and enforced. If staffing changes are recommended, those decisions should be given effect before December 12, so as to avoid allegations later under the new law that certain employees are being singled out based on age.

The need for modified work based on age should be expected. For example, special equipment may be needed to account for typical age-related physical changes: hearing and eyesight issues, arthritic conditions, etc. Leaves of absence for care of ailing family members may become more common.

Retirement incentives will continue to be non-discriminatory, since they act as inducements, but leave the decision up to the employee. Voluntary retirement on the employee's part is fine, and employers may sweeten the pot if they wish. However, it is important to note that unlike the situation today where an employer can terminate an employee's services at any time, subject to giving the appropriate amount of advance notice or pay in lieu, that ability will disappear if age forms even a part of the decision to end the relationship. In advance of the new law taking effect, employers should check with their health and disability insurers to discuss the cost implications of extending coverage to those beyond age 65.

Every employer needs to be aware of what is coming, consider the specific implications for its particular work force (whether unionized or not) and consider what house cleaning is necessary during the run-up to implementation in December. Making plans now will provide for a smooth transition and minimize human resource or financial surprises.

The foregoing is provided to you for information purposes only. We caution you to obtain legal advice specific to your situation in all circumstances.

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